

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 27 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

JUAN VALDEZ GARCIA; LEONARDO
GUZMAN RODRIGUEZ; ALICIA
MAYORQUIN; MARIA GUADALUPE
FONSECA, a/k/a "DONA LUPE";
GUADALUPE MONSEARRATH PEREZ
GARCIA, a/k/a "MONSE"; JOSE
GUADALUPE ARCINIEGA; PANFILO
HERRERA VILLANUEVA,

Defendants - Appellees.

No. 06-50536

D.C. No. CR-04-1659-TJH

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Terry J. Hatter, District Judge, Presiding

Argued and Submitted October 19, 2007
Pasadena, California

Before: KOZINSKI, TASHIMA, and McKEOWN, Circuit Judges.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

The government appeals from the district court's order suppressing evidence obtained from a wiretap. We have jurisdiction pursuant to 18 U.S.C. § 3731, and we reverse.

The government obtained an order permitting it to intercept communications from a telephone used by defendant Juan Garcia. After Garcia was indicted, he filed a motion to suppress the evidence obtained from the wiretap. The district court, with a different judge now presiding over Garcia's case, ordered a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). At the close of the hearing, although it did not find a *Franks* violation, the district court ordered the evidence suppressed for failure to meet the necessity requirement. This appeal timely followed.

We review the issuing judge's decision that the wiretap was necessary for an abuse of discretion. *United States v. Staves*, 383 F.3d 977, 980 (9th Cir. 2004). After reviewing the affidavit supporting the application, we cannot say that the issuing judge abused her discretion in granting the application. Accordingly, the district court erred in granting Garcia's motion to suppress.

REVERSED and REMANDED.